

REMARKS

The Office Action of April 3, 2006 has been carefully reviewed and this paper is Applicants response thereto. Claims 1-36 are pending in this application. Claims 1-15, 22-32 and 35-36 were rejected under 35 U.S.C. § 102(e) in view of U.S. Publication No. 2002/0151327 to Levitt (Levitt). Claims 16-21 and 33-34 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Publication No. 2002/0059642 to Russ et al. (Russ) in view of Levitt. In response, Applicants respectfully traverse the rejection in view of the remarks that follow.

Rejection under § 102(e) - Levitt

Claims 1-15, 22-32 and 35-36 were rejected under 35 U.S.C. § 102(e) in view of Levitt. Levitt is a non-provisional application that was filed on December 20, 2001 and claims priority to provisional application No. 60/258,115 that was filed on December 22, 2000. As the present application was filed on June 27, 2001, which is before the filing date of the nonprovisional application, Levitt can only be use to reject the pending claims based on the disclosure provided in the provisional application. Applicants have reviewed the provisional application, however, and respectfully submit that the provisional application does not disclose the subject matter in the non-provisional application that was used to reject the pending claims. In other words, the disclosure of Levitt that the Office Action suggests anticipates the pending claims is subject matter with a priority date after the priority date of the present application and therefore cannot be used to reject the pending claims. For example, while not agreeing that Levitt actually anticipates the pending claims, Applicants have been unable to locate the discussion of Levitt, pg. 6, ¶ 72-73 or pg. 15, ¶ 272 in the provisional application. Thus, as the Office Action's argument with respect to claim 1 is not supported by the provisional application, Levitt cannot be said to disclose all the features of claim 1 even under the Office Action's interpretation of Levitt. This same reasoning applies to the other pending claims as well.

Therefore, while not agreeing with the reasoning provided in the Office Action, as the provisional application fails to support the arguments being made in the Office Action, Levitt cannot be said to disclose all the features of the pending claims. As claims 1-15, 22-32 and 35-36 recite features that are not disclosed by Levitt, Levitt cannot be said to anticipate the pending claims.

Accordingly, withdrawal of this ground of rejection is respectfully requested.

Rejection of the Claim – 35 U.S.C. § 103(a)

Claims 16-21 and 33-34 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Russ in view of Levitt. The Office Action admits that Russ fails to disclose all the features of the pending claims but suggests that Levitt corrects the deficiencies of Russ. As noted above, however, Levitt adds new subject matter (compared to the provisional application) that cannot be used with respect to the pending claims. Applicants have reviewed the provisional application and, as discussed above, have been unable to locate the recited features of claims 16-21 and 33-34 that are admittedly not disclosed by Russ. Therefore, as Levitt fails to disclose all the features of claim 16 that are admitted to be absent from Russ, not all the features of claims 16-21 and 33-34 are disclosed by the references of record. Accordingly, the references of record fail to support a *prima facie* case of obviousness.

In view of the above, withdrawal of this ground of rejection is respectfully requested.

CONCLUSION

As all rejections have been addressed, Applicants respectfully submit that the pending application is in condition for allowance. A notice to this effect is respectfully requested. Please feel free to contact the undersigned should any questions arise with respect to this case that may be addressed by telephone.

Respectfully submitted,

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